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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,850	09/17/2003	Gunter G. Fuss	A-65550-2/ESW	8393
40461	7590	09/09/2005	EXAMINER	
EDWARD S. WRIGHT 1100 ALMA STREET, SUITE 207 MENLO PARK, CA 94025			PATTERSON, MARC A	
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 09/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,850

Applicant(s)

FUSS ET AL

Examiner

Marc A. Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 30 is objected to because of the following informalities: The amendment to Claim 30 appears to delete the number '32,' and to amend the number to '29.' However, the number 29 did not appear in the original claim. Appropriate correction is required.
2. Claim 31 is objected to because of the following informalities: The meaning of the phrase 'ends portions' is unclear. For purposes of examination, the phrase will be interpreted to mean 'end portions.' Appropriate correction is required.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 29 – 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratcliffe (U.K. Patent No. 2,186,864) in view of Davies (U.K. Patent No. 1,402,962).

With regard to Claim 29, Ratcliffe discloses a cushioning chamber (bag; page 1, lines 47 – 51) comprising a plastic bag sealed at its edges (therefore comprising two superposed layers of plastic film, which are sealed together peripherally; Abstract); the chamber is filled partially with a loose fill such as a plurality of individual particles being free to move about within the

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container (loose fill pieces of foam; page 1, lines 54 – 56); a plurality of perforations are made in the chambers (page 1, lines 51 – 59) and air is therefore able to pass into and out of the chamber, and the chamber is therefore able to conform to the shape of an object cushioned thereby.

Ratcliffe fails to teach a chamber that is sealed peripherally in discrete areas with air passing into and out of the chamber through the spaces between the sealed areas.

Davies teaches a bag (therefore having a chamber; page 1, lines 20 – 22) which is sealed peripherally in discrete areas (having spaced – aligned point welds; page 1, lines 74 – 77) for the purpose of obtaining a container that allows undesirable air to escape (page 1, lines 46 – 49 and 78 – 81).

One of ordinary skill in the art would therefore have recognized the advantage of providing for the peripheral sealing of Davies in Ratcliffe, which is a chamber comprising a bag, depending on the desired escapability undesirable air of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for peripheral sealing in discrete areas in Ratcliffe in order to obtain a container that allows undesirable air to escape as taught by Davies.

With regard to Claims 30 – 31, Ratcliffe fails to disclose a bag that comprises a length of plastic tubing which is sealed together in a plurality of discrete areas which are spaced apart across the end portions of the tubing and along lines at opposite ends of the chamber. However, the bag that is taught by Davies comprises a flattened tube (page 1, lines 25 – 27) and is sealed at both ends (page 1, lines 60 – 66), therefore sealed together in a plurality of discrete areas which are spaced apart across the end portions, for the purpose of obtaining a container that allows undesirable air to escape (page 1, lines 46 – 49 and 78 – 81). One of ordinary skill in the art

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would therefore have recognized the advantage of providing for the length of plastic tubing of Davies in Ratcliffe, which is a chamber comprising a bag, depending on the desired escapability undesirable air of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a length of plastic tubing which is sealed together in a plurality of discrete areas which are spaced apart across the end portions of the tubing, and therefore along lines at opposite ends of the chamber, in Ratcliffe, in order to obtain a bag that allows undesirable air to escape as taught by Davies.

ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 29 – 31 as being unpatentable over Ratcliffe (U.K. Patent No. 2,186,864) in view of Davies (U.K. Patent No. 1,402,962), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 4, that there is no motivation to combine the teachings of Ratcliffe and Davies because Ratcliffe and Davies are two entirely different devices; Davies is directed to a shopping bag, Applicant argues, which has point welds to let air escape, and also to permit the walls of the bag to be pulled apart to be used for waste collection.

However, as discussed above, both Ratcliffe and Davies disclose sealed bags, and both Ratcliffe and Davies are designed to allow for the escape of undesirable air; the two devices are therefore not entirely different devices. Furthermore, because the point welds of Davies are

provided for the escape of undesirable air, one of ordinary skill in the art would have been motivated to provide for the point welds of Davies in Ratcliffe, as discussed above.

Applicant also argues on page 4 that Ratcliffe is directed to a cushion which already has air holes, thus there is no need for point welds.

However, Ratcliffe discloses the desirability of allowing for the escape of air, as discussed above, and does not disclose a maximum number of air holes, and therefore is not limited only to air holes as a means for allowing for the escape of air.

Applicant also argues on page 4 that the use of point welds would probably render the cushion of Ratcliffe unfit for its purpose because it could easily pop open and spill the contents of the cushion if the cushion were subjected to a sudden impact or mild pressure; the combination of Ratcliffe and Davies, Applicant argues, is therefore impermissible hindsight reconstruction.

However, Davies does not teach easy rupture during a sudden impact, or mild pressure, although Davies teaches that the bag is more easily opened by pulling with point welds than without point welds; the combination of Ratcliffe and Davies is therefore not impermissible hindsight reconstruction.

Applicant also argues on page 4 that Claim 29 is also distinguished by calling for cushioning material comprising two superposed layers sealed together in discrete areas, and having loose fill packing material which are free to move about, and conform to the shape of an object, and air passing through the spaces between the areas.

However, as stated above, Ratcliffe and Davies disclose cushioning material comprising two superposed layers sealed together in discrete areas, and having loose fill packing material

which are free to move about, and conform to the shape of an object, and air passing through the spaces between the areas.

Applicant also argues on page 4 that Claim 30 is patentable for the reasons stated for Claim 29, and is further distinguished because the spaced apart sealed areas extend along lines at opposite ends of the chamber. In response, the above rejections are repeated; furthermore, as stated above, Ratcliffe and Davies disclose spaced apart sealed areas extending along lines at opposite ends of the chamber.

Applicant also argues, on page 5, that Claim 31 distinguishes in calling for a cushioning material comprising plastic tubing that is sealed in discrete areas spaced apart across the end portions of the tubing.

However, as stated above, the bag that is taught by Davies comprises a flattened tube (page 1, lines 25 – 27) and is sealed at both ends (page 1, lines 60 – 66), therefore sealed together in a plurality of discrete areas which are spaced apart across the end portions, for the purpose of obtaining a container that allows undesirable air to escape (page 1, lines 46 – 49 and 78 – 81). One of ordinary skill in the art would therefore have recognized the advantage of providing for the length of plastic tubing of Davies in Ratcliffe, which is a chamber comprising a bag, depending on the desired escapability undesirable air of the end product.

The claims in the above rejection are numbered 29 – 31, to correct the numbering of the previous Action, which was from 32 – 34.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marc Patterson 9/6/05
Marc A. Patterson, PhD.
Examiner
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